

D-1215-CV-201000799 - Monday, November 22, 2010

**ROGELIO OCHOA V ROY WOOD****CASE DETAIL**

CASE #	CURRENT JUDGE	FILING DATE	COURT
D-1215-CV-201000799	DAVID I RUPP	09/14/2010	ALAMOGORDO District

**PARTIES TO THIS CASE**

PARTY TYPE	PARTY DESCRIPTION	PARTY #	PARTY NAME
D	DEFENDANT	1	WOOD ROY
P	PLAINTIFF	1	OCHOA ROGELIO

**CIVIL COMPLAINT DETAIL**

COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISP	DISP DATE
09/14/2010	1	OPN: COMPLAINT	Pending	

**COA DESCRIPTION**

COA SEQ #	COA DESCRIPTION
1	TORT:PERSONAL INJURY AUTO

**PARTY NAME**      **PARTY TYPE**      **PARTY #**

WOOD ROY	D	1
OCHOA ROGELIO	P	1

**REGISTER OF ACTIONS ACTIVITY**

EVENT DATE	EVENT DESCRIPTION	EVENT RESULT	PARTY TYPE	PARTY #	AMOUNT
11/10/2010	CERTIFICATE OF SERVICE	D	1		
	OF DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUEST				
	FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF				
11/10/2010	JURY DEMAND 12 PERSON	D	1		
11/10/2010	ASM: JURY 6 PERSON	D	1		150.00
11/08/2010	ANSWER	D	1		
	DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES				
11/08/2010	ENTRY OF APPEARANCE	D	1		
	WILLIAM R ANDERSON ENTERS APPEARANCE FOR DEFENDANT				
10/13/2010	SUMMONS RETURN	D	1		
	DEFENDANT SERVED WITH SUMMONS AND COMPLAINT ON 9/29/2010				
09/14/2010	SUMMONS ISSUED				
	TO: ROY WOOD				
09/14/2010	JURY DEMAND 6 PERSON				
09/14/2010	OPN: COMPLAINT	P	1		
	FOR DAMAGES				
09/14/2010	ASM: JURY 6 PERSON	P	1		150.00
09/14/2010	ASM: CIVIL FILING-DIST.	P	1		117.00

**JUDGE ASSIGNMENT HISTORY**

ASSIGNMENT DATE	JUDGE NAME	SEQ #	ASSIGNMENT EVENT DESCRIPTION
09/14/2010	DAVID I RUPP	1	INITIAL ASSIGNMENT

FILED  
DISTRICT COURT OF  
STATE OF NEW MEXICO OTERO COUNTY, N.M.  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

2010 SEP 14 PM 12:51

JAN PERRY

ROGELIO OCHOA,

Plaintiff,

CLERK BY DOCKETED

v.

No. CV 2010-799 IV

ROY WOOD,

Defendant.

### COMPLAINT FOR DAMAGES

COMES NOW Rogelio Ochoa ("Plaintiff"), complaining of Roy Wood ("Defendant"), and for cause of action respectfully states:

### PARTIES

1. Rogelio Ochoa is an individual residing in Otero County, New Mexico.
2. Defendant is an individual residing in Dona Ana County, New Mexico. Defendant may be served with process at 1187 Finley, Chaparral, New Mexico 88021 or wherever he may be found.

### JURISDICTION AND VENUE

3. Plaintiff claims damages within the jurisdiction of this Court.
4. Venue is proper in this Court because the cause of action arose in Otero County.

### FACTS

5. On or about November 29, 2007, Rogelio Ochoa was driving his vehicle northbound on US Highway 54 in Otero County, New Mexico. At all relevant time, he was driving cautiously, and exercising all due care. Defendant was operating a vehicle with a trailer on northbound Highway 54. Defendant's vehicle was stopped across the traveling lanes of the highway. Rogelio's vehicle impacted Defendant's vehicle. The impact caused Rogelio to sustain personal injuries.

**CAUSE OF ACTION IN NEGLIGENCE AND NEGLIGENCE PER SE**

6. Plaintiff incorporates the factual allegation in Paragraph 5 above. Plaintiff's damages were the direct and proximate result of Defendant's negligence. Defendant had a legal duty to act with ordinary prudence for Plaintiff's safety. Defendant breached his duty of care by driving and operating a vehicle in an unsafe manner. Without limitation, Defendant was negligent in one or more of the following ways:

- a. In failing to keep a proper lookout as a person of ordinary prudence would have done under the same or similar circumstances;
- b. In failing to control his vehicle;
- c. In failing to clear the highway of his vehicle;
- d. In failing to yield the right of way;
- e. In failing to take proper emergency precautions and responses;
- f. In failing to use proper emergency lighting;
- g. In taking no action to avoid the collision;
- h. In failing to give his full time and attention to operating the vehicle, in violation of New Mexico Statutes Section 66-8-114(A);
- i. In failing to use ordinary care in operating the vehicle, in violation of New Mexico Statutes Section 66-8-114(B); and
- j. In failing to obey a traffic control device, in violation of New Mexico Statutes Section 66-7-104.

Each of these acts and omissions, singularly and in combination with others, constitutes negligence that proximately caused Plaintiff's damages.

**DAMAGES**

7. As a direct and proximate result of Defendant's negligence, Plaintiff suffered physical injuries, pain and suffering, emotional distress, and physical impairment, and incurred medical expenses and loss of earning capacity. In reasonable probability, these damages will continue in the future.

**PRAYER**

8. WHEREFORE, PREMISES CONSIDERED, Plaintiff Rogelio Ochoa respectfully prays that Defendant be cited and commanded to appear herein, and, after all proceedings are had, that judgment be entered in favor of Plaintiff and against Defendant for the following:

- General and special damages;
- Medical expenses and loss of earning capacity;
- Prejudgment interest at the maximum rate provided by law;
- Postjudgment interest at the maximum rate provided by law;
- Costs of suit; and
- Such other and further relief, both general and special, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

McBRIDE LAW GROUP



ROBERT J. ANDREOTTI  
Attorney for Plaintiff  
6565 Americas Parkway NE, Ste. 200  
Albuquerque, NM 87110  
(505) 563-5888  
Direct 214-455-5481

ATTORNEY FOR PLAINTIFF

STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

FILED  
DISTRICT COURT OF  
OTERO COUNTY, N.M.

SEP 14 PM 12:51

ROGELIO OCHOA,

JAN PERRY

Plaintiff,

CLERK BY

*R.P.*  
DOCKETED

v.

ROY WOOD,

Defendant.

**JURY DEMAND**

NOW COMES Rogelio Ochoa, the plaintiff in this action, and hereby demands a trial by a jury of six persons in the above-entitled and numbered cause.

Respectfully submitted,

McBRIDE LAW GROUP

*Robert J. Andreotti*  
ROBERT J. ANDREOTTI

Attorney for Plaintiff

6565 Americas Parkway NE, Suite 200  
Albuquerque, New Mexico 87110  
Telephone: (505) 563-5888

STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

FILED  
DISTRICT COURT OF  
OTERO COUNTY, N.M.

ROGELIO OCHOA,

2010 SEP 14 PM 1:14

JAN PERRY

*AH*  
DOCKETED

Plaintiff,

v.

CLERK BY No. CV 2010-799 IV

ROY WOOD,

Defendant.

**SUMMONS**

TO: ROY WOOD  
1187 Finley  
Chaparral, New Mexico 88021

Defendant(s) Greetings:

YOU ARE HEREBY directed to serve a pleading or motion to the Plaintiff's Complaint for Damages within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are noticed that, unless you serve and file a responsive pleading or motion, the Plaintiffs will apply to the Court for relief demanded in the Complaint for Personal Injuries.

Attorney for the Plaintiffs:

McBRIDE LAW GROUP  
ROBERT J. ANDREOTTI, ESQ.  
6565 Americas Parkway, N.E., Suite 200  
Albuquerque, New Mexico 87110  
Telephone: (505) 563-5888

WITNESS the Honorable DAVID I. ROPP District Judge of the Twelfth Judicial  
District Court of said County, this 14th day of Sept., 20 10.

(SEAL)

CLERK OF THE DISTRICT COURT

By *[Signature]*  
Deputy

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at this time. It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Judgment by default against you. If you want the advice of a lawyer and don't know one, you may wish to call The State Bar Statewide Lawyer Referral Service at 505-797-6047.

**RETURN**

STATE OF NEW MEXICO )  
                          )  
COUNTY OF \_\_\_\_\_ ) ss.  
                          )

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

[ ] to the defendant \_\_\_\_\_ (*used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint*).

[ ] to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (*used when service is by mail or commercial courier service*).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

[ ] to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, (*used when the defendant is not presently at place of abode*) and by mailing by first class mail to the defendant at \_\_\_\_\_ (*insert defendant's last known mailing address*) a copy of the summons and complaint.

[ ] to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at: \_\_\_\_\_ (*insert defendant's business address*) and by mailing the summons and complaint by first class mail to the defendant at: \_\_\_\_\_ (*insert defendant's last known mailing address*).

[ ] to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.

[ ] to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_ (*used when defendant is a minor or an incompetent person*).

[ ] to \_\_\_\_\_ (*name of person*), \_\_\_\_\_, (*title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision*).

Fees: \_\_\_\_\_

Signature of person making service

\_\_\_\_\_  
Title (*if any*)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_  
Notary Public

STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

ROGELIO OCHOA,

Plaintiff,

v.

ROY WOOD,

Defendant.

FILED  
DISTRICT COURT OF  
OTERO COUNTY, N.M.

2010 OCT 13 AM 10:49

JAN PERRY

*JPM*  
DOCKETED

CLERK BY  
No. CV 2010 - 799 IV

SUMMONS

TO: ROY WOOD  
1187 Finley  
Chaparral, New Mexico 88021

Defendant(s) Greetings:

YOU ARE HEREBY directed to serve a pleading or motion to the Plaintiff's Complaint for Damages within thirty (30) days after service of this summons, and file the same, all as provided by law.

You are noticed that, unless you serve and file a responsive pleading or motion, the Plaintiffs will apply to the Court for relief demanded in the Complaint for Personal Injuries.

Attorney for the Plaintiffs: McBRIDE LAW GROUP  
ROBERT J. ANDREOTTI, ESQ.  
6565 Americas Parkway, N.E., Suite 200  
Albuquerque, New Mexico 87110  
Telephone: (505) 563-5888

WITNESS the Honorable DAVID I. RUFF District Judge of the Twelfth Judicial  
District Court of said County, this 14<sup>th</sup> day of Sept, 2010.

CLERK OF THE DISTRICT COURT

By

*[Signature]*  
Deputy

(SEAL)

NOTE: This summons does not require you to see, telephone or write to the District Judge of the Court at this time. It does require you or your attorney to file your legal defense to this case in writing with the Clerk of the District Court within 30 days after the summons is legally served on you. If you do not do this, the party suing may get a Judgment by default against you. If you want the advice of a lawyer and don't know one, you may wish to call The State Bar Statewide Lawyer Referral Service at 505-797-6047.

RETURN

STATE OF NEW MEXICO )  
COUNTY OF DONA GUA) ) ss.

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in DONA GUA County on the 29 day of SEP, 2010, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

to the defendant ROY WOOD (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint).

[ ] to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

[ ] to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address) a copy of the summons and complaint.

[ ] to \_\_\_\_\_ the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at: \_\_\_\_\_ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at: \_\_\_\_\_ (insert defendant's last known mailing address).

[ ] to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.

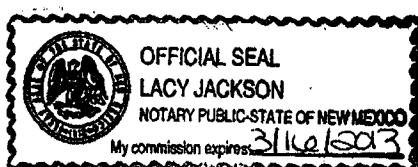
[ ] to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_ (used when defendant is a minor or an incompetent person).

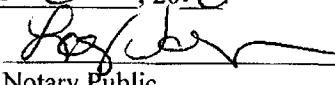
[ ] to \_\_\_\_\_ (name of person), \_\_\_\_\_, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \_\_\_\_\_

  
Signature of person making service  
PROCESS SERVER  
Title (if any)

Subscribed and sworn to before me this 30<sup>th</sup> day of September, 2010



  
Notary Public

Nov. 8, 2010 3:37PM

No. 2445 P. 2

STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

ROGELIO OCHOA,

Plaintiffs,

vs.

ROY WOOD,

Defendant.

FILED  
DISTRICT COURT OF  
OTERO COUNTY, NM

2010 NOV -8 PM 3:44

JAN PERRY

CLERK

BY

CASE NO. CV-2010-0799 IV

*[Signature]*  
DOCKETED

**ENTRY OF APPEARANCE**

COMES NOW the undersigned attorney, and enters his appearance on behalf of  
Defendant Roy Wood in the above-entitled cause of action.

Respectfully submitted,

By:

*[Signature]*  
William R. Anderson  
Attorney for Defendant  
3800 E. Lohman Avenue, Suite B  
Las Cruces, NM 88011  
(575)522-4102

I hereby certify that a true and correct copy  
of the foregoing pleading was mailed to:

Robert J. Andreotti  
McBride Law Group  
Attorney for,  
6565 Americas Parkway NE #200  
Albuquerque, NM 87110

this 8 day of November, 2010.

BY:

*[Signature]*  
William R. Anderson

Nov. 8. 2010 3:37PM

No. 2445 P. 3

**NOTICE**

All attorneys and staff of the are employees of the Claims Litigation Department, Farmers Insurance Exchange and Affiliates. Not a Partnership.

Nov. 8. 2010 3:42PM

No. 2446 P. 2

FILED  
DISTRICT COURT OF  
OTERO COUNTY, NM

STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

2010 NOV -8 PM 3:47

JAN PERRY

CLERK

*JP*  
BY  
DOCKETED

ROGELIO OCHOA,

Plaintiffs,

vs.

CASE NO. CV-2010-0799 IV

ROY WOOD,

Defendant.

**DEFENDANT ROY WOOD'S ANSWER TO PLAINTIFF'S COMPLAINT FOR  
DAMAGES**

COMES NOW the Defendant, Roy Wood, by and through counsel of record, ORRAJ, ANDERSON & OBREY-ESPINOZA(William R. Anderson), and in Answer to Plaintiff's Complaint for Damages, hereby state as follows:

**PARTIES**

1. Defendant is without knowledge or information sufficient to allow him to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.

**JURISDICTION AND VENUE**

3. Defendant is without knowledge or information sufficient to allow him to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Complaint. Affirmatively Defendant states that this Court lacks subject matter jurisdiction.

Nov. 8. 2010 3:42PM

No. 2446 P. 3

4. Defendant admits the allegations contained in Paragraph 4 of Plaintiff's Complaint.

#### FACTS

5. With regard to the allegations contained in Paragraph 5 of Plaintiff's Complaint, Defendant admits that on November 29, 2007, Plaintiff was driving northbound on US Highway 54 in Otero County, New Mexico. Defendant further admits that Plaintiff's vehicle struck a vehicle being driven by Defendant, and that the impact cause Plaintiff to sustain personal injuries. Defendant denies the remainder of the allegations contained in Paragraph 5 of Plaintiff's Complaint.

#### CAUSE OF ACTION IN NEGLIGENCE AND NEGLIGENCE PER SE

6. Defendant denies the allegations contained in Paragraph 6 of Plaintiff's Complaint.

#### DAMAGES

7. Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Complaint.
8. Defendant denies each and every allegation of Plaintiff's Complaint which has not been specifically admitted herein.

#### AFFIRMATIVE & OTHER DEFENSES

Subject to discovery Defendant will, or may, assert the following affirmative defenses at the trial of this cause of action:

1. The acts and damages complained of by Plaintiff, which acts and damages are specifically denied, were the proximate result of the act or failure to act of Plaintiff, thereby barring or reducing recovery of Plaintiff against Defendant.

Nov. 8, 2010 3:42PM

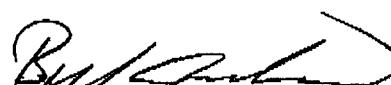
No. 2446 P. 4

2. Plaintiff has failed to mitigate damages.
3. Lack of Subject Matter Jurisdiction.
4. Plaintiff's Claims are subject to the provisions of the Federal Tort Claims Act.
5. Defendant reserves the right to amend his Answer to Plaintiff's Complaint to include additional Affirmative Defenses and Counterclaims once facts supporting same become known.

**WHEREFORE**, the Defendant prays that the Court enter an Order dismissing Plaintiff's Complaint with prejudice, for his costs incurred in defending this matter, and for such other and further relief as the Court deems proper.

Respectfully submitted,

By:

  
\_\_\_\_\_  
William R. Anderson  
Attorney for Defendant  
3800 E. Lohman Avenue, Suite B  
Las Cruces, NM 88011  
(575)522-4102

I hereby certify that a true and correct copy of the foregoing pleading was mailed to:

Robert J. Andreotti  
McBride Law Group  
Attorney for,  
6565 Americas Parkway NE #200  
Albuquerque, NM 87110

this 8 day of November, 2010.

BY:

  
\_\_\_\_\_  
William R. Anderson

Nov. 8, 2010 3:42PM

No. 2446 P. 5

NOTICE

All attorneys and staff of are employees of the Claims Litigation Department, Farmers Insurance Exchange and Affiliates, Not a Partnership.

STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

ROGELIO OCHOA,

Plaintiff,

vs.

ROY WOOD,

Defendant.

FILED  
DISTRICT COURT OF  
OTERO COUNTY, N.M.

2010 NOV 10 AM 11:03

JAN PERRY  
*[Signature]*  
CLERK BY DOCKETED

CASE NO. CV-2010-0799 IV

**JURY DEMAND**

COMES NOW the Defendant, by and through his attorneys of record, ORRAJ, ANDERSON & OBREY-ESPINOZA William R. Anderson and requests that this matter be tried before a jury of twelve persons. A Jury Demand requesting six persons was previously filed and Defendant requests an additional six persons. A jury fee in the amount of \$150.00 is tendered herewith.

Respectfully submitted,

ORRAJ, ANDERSON & OBREY-ESPINOZA

By:

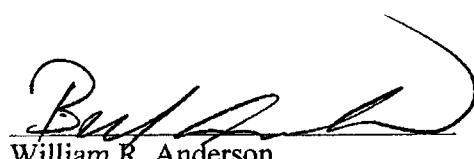
*[Signature]*  
William R. Anderson  
Attorney for Defendant,  
3800 E. Lohman, Suite B  
Las Cruces, NM 88011  
(575) 522-4102

I hereby certify that a true and correct copy  
of the foregoing pleading was mailed to:

Robert J. Andreotti  
McBride Law Group  
Attorney for Plaintiff,  
6565 Americas Parkway NE #200  
Albuquerque, NM 87110

this 8 day of November, 2010.

BY:



William R. Anderson

STATE OF NEW MEXICO  
COUNTY OF OTERO  
TWELFTH JUDICIAL DISTRICT

FILED  
DISTRICT COURT OF  
OTERO COUNTY, N.M.

2010 NOV 10 AM 11:03

JAH PERRY

CLERK

*JAH*  
DOCKETED

ROGELIO OCHOA,

Plaintiffs,

vs.

ROY WOOD,

Defendant.

CASE NO. CV-2010-0799 IV

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copies of Defendants' First Set of Interrogatories and Request for Production of Documents to Plaintiff were mailed to Plaintiff's counsel of record this 8 day of November, 2010.

Respectfully submitted,

ORRAJ, ANDERSON & OBREY-ESPINOZA

By:

*William R. Anderson*  
William R. Anderson  
Attorney for Defendant,  
3800 E. Lohman, Suite B  
Las Cruces, NM 88011  
(575) 522-4102

I hereby certify that a true and correct copy  
of the foregoing pleading was mailed to:

Robert J. Andreotti  
McBride Law Group  
Attorney for,  
6565 Americas Parkway NE #200  
Albuquerque, NM 87110

this 8 day of November, 2010.

BY:



William R. Anderson